

Feb

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
LEONARD RIST,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 82-114

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a notice of violation and civil penalty for violation of open burning statutes and codes, came on for hearing before the Pollution Control Hearings Board; Larry Faulk, Member, and Gayle Rothrock, presiding; at Vancouver, Washington, on February 14, 1983. The informal proceedings were electronically recorded.

Appellant Leonard Rist and his wife appeared pro se. Respondent Southwest Air Pollution Control Authority appeared by its attorney David Jahn.

Witnesses were sworn and testified. Exhibits were examined. From

1 the testimony heard and exhibits examined, the Pollution Control
2 Hearings Board makes these

3 FINIDNGS OF FACT

4 I

5 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
6 a certified copy of its Regulation I containing respondent's
7 regulations and amendments thereto.

8 II

9 On July 15, 1982, just after mid-day, the appellant Mr. Rist
10 allowed or caused an outdoor fire of natural vegetation and scrap
11 materials to occur at the site of his residence, which is also the
12 site of his wife's recycling business.

13 III

14 The fire pile was elongated; approximately twelve feet long and
15 two feet wide at the rear of the premises. At the bottom of the fire
16 pile, somewhat charred, lay pieces of metal cans, plastic, magazines
17 and catalogs, bottles, and general garbage. The pile was built of
18 blackberry briars and old fruit trees. A garden hose rested beside
19 the fire.

20 IV

21 Respondent's inspector noticed smoke from the roadway and arrived
22 at the site of the fire and discussed codes and practices of open
23 burning, residential and commercial, with appellant Rist. The fire
24 did not burn out while they spoke and died out much later. The
25 appellant received and signed a field notice of violation of Section

26 FINAL FINDINGS OF FACT,
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1 400-035 of Regulation I and was left with the impression that any
2 enforcement matter was over.

3 V

4 Appellant received a regular notice of violation and a letter from
5 the Executive Director of respondent agency levying a \$250 fine, \$150
6 of which was to be suspended because of the Rist's recent move to
7 Vancouver and Clark County and consequent lack of familiarity with
8 certain Southwest Air Pollution Control Authority (SWAPCA) and fire
9 department outdoor fire rules. Appellant appealed this penalty to the
10 Executive Director, who, in turn, told him to appeal to the Board at
11 its offices in Olympia/Lacey in accordance with WAC 371-08, rules for
12 filing appeals.

13 VI

14 The appellant mailed his appeal to the Board, it arriving here 32
15 days after the subject penalty was received at his home. Time was
16 lost in obtaining the Board's address and forwarding a regular
17 appeal. Additional time was consumed in two mailings and delivery.
18 Appellant did not carelessly file an appeal, without regard to
19 statutory and administrative code time limits.

20 VII

21 Appellant has no prior record of violation of SWAPCA regulations.
22 Appellant's wife has been in the recycling business a relatively short
23 period of time.

24 VIII

25 Any Conclusion of Law which should be deemed a Finding of Fact is
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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1 hereby adopted as such.

2 From these Findings the Board comes to these

3 CONCLUSIONS OF LAW

4 I

5 The Legislature of the State of Washington has enacted the
6 following policy on outdoor fires:

7 It is the policy of the state to achieve and maintain
8 high levels of air quality and to this end to minimize
9 to the greatest extent reasonably possible the burning
10 of outdoor fires. Consistent with this policy, the
legislature declares that such fires should be allowed
only on a limited basis under strict regulation and
close control. (RCW 70.94.740).

11 Pursuant to this and other legislative authority, the respondent has
12 adopted its Regulation I, Section 400-035, which provides in relevant
13 part:

14 No person shall ignite, cause to be ignited, permit
15 to be ignited, or suffer, allow, or maintain any open
16 fire within the jurisdiction of the Authority, except
as provided in this Regulation...(2) Open burning may
be done under permit (under certain conditions)...

17 Appellant's failure to inquire about an open burning permit,
18 permissible burning seasons, and lawful disposal methods for recycling
19 business trash caused him to be engaged in open burning of natural
20 vegetation mixed with trash, which cannot qualify for permit and
21 therefore, to be in violation of Section 400-035(2).

22 II

23 Under our State's policy of limited outdoor burning, it is not
24 safe to assume that even a little recycling business trash may be
25 disposed of by open burning. Before igniting outdoor fires, it is the

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1 responsibility of the citizen concerned to become aware of and to
2 adhere precisely to air pollution control rules, such as respondent's
3 Regulation I. Because, however, the violations committed by the
4 appellant are apparently his first offenses against respondent's
5 Regulation I, part of the assessed penalty should be suspended.

6 III

7 Appellant's formal appeal document was filed in good faith with
8 the Board but came after the 30-day filing period due to extenuating
9 circumstances. The appeal meets the requirements of WAC 371-08 in
10 such a fashion as to be a valid acceptable appeal. Respondent's
11 motion to dismiss for failure to timely file is without merit.

12 IV

13 Any Finding of Fact which should be deemed a Conclusion of Law is
14 hereby adopted as such.

15 From these Conclusions, the Pollution Control Hearings Board
16 enters this
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ORDER

The notice of violation and \$250 civil penalty is affirmed; provided, however, that \$200 of the penalty is suspended on condition that appellant not violate respondent's regulations for a period of one year after this Order becomes final.

DONE this 23rd day of February, 1983.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Chairman


LARRY FAULK, Member